

Departmental Disclosure Statement

Regulatory Systems (Transport) Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material
- some of the key quality assurance products and processes used to develop and test the content of the Bill
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Transport.

The Ministry of Transport certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

3 December 2019

Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information	5
Part Three: Testing of Legislative Content.....	7
Part Four: Significant Legislative Features	9

Part One: General Policy Statement

The Regulatory Systems (Transport) Amendment Bill (RSTA Bill) is an omnibus bill that contains amendments to legislation administered by the Ministry of Transport. The objective of the RSTA Bill is to maintain the effectiveness and efficiency of the regulatory system established by transport legislation, and to reduce the chance of regulatory failure.

The RSTA Bill will achieve this objective by:

- addressing transport regulatory duplication, gaps, errors, and inconsistencies within transport legislation
- ensuring that regulators have the effective tools needed to keep the transport regulatory system up to date and relevant
- removing unnecessary compliance costs from the transport system.

The RSTA Bill is intended to be a vehicle for smaller regulatory fixes to be made in a timely and cost-effective fashion in order to deliver benefits to the transport system. The amendments do not justify standalone bills, but are more significant than amendments that are generally included in a Statutes Amendment Bill.

The RSTA Bill is part of a series of activities to support the whole of system view of regulation, described in the Transport Regulatory Stewardship Plan for 2019 – 2022. This is a departure from the previous ad-hoc approach to transport-related legislative maintenance that caused inefficiencies and ineffectiveness within the transport system.

There are three aspects to the RSTA Bill, as follows:

- enabling transport instruments
- clarifying exemption and revocation powers
- other minor regulatory stewardship matters.

Transport instruments

The RSTA Bill empowers the use of transport instruments within land and maritime legislation. This would enable the Minister of Transport to allocate the maintenance of detailed requirements within legislation to a specified individual, such as the relevant transport regulator.

The introduction of transport instruments to our current system will enable a quick response to change, ensure decision-making sits at the right level in terms of authority and expertise, support efficiency and accountability, and ensure our regulatory system is up to date.

Clarifying powers of exemption and revocation

The RSTA Bill proposes amendments to land transport and maritime legislation to clarify exemption powers in secondary legislation. The current exemption and revocation powers in the Land Transport Act 1998 (LTA), Maritime Transport Act 1994 (MTA), and Maritime Security Act 2004 (MSA), lack some necessary features, are unclear, and are not modern best practice.

The amendments would modernise these provisions to ensure they explicitly allow for class and individual exemptions, expiry, and revocation. The new provisions are modelled on sections 220 and 221 of the Health and Safety at Work Act 2015 (HSWA). The HSWA provisions are referenced in the Legislation Design Advisory Committee Guidelines and are modern best practice.

Minor regulatory stewardship matters

The RSTA Bill includes other matters that support regulatory stewardship. This includes:

- adjusting the permitted size of transport Crown agent boards
- increasing maximum fines in maritime legislation to align the figures with those in land and civil aviation legislation
- increasing the time period for impounded vehicles following serious crashes as the current period puts unreasonably tight time constraints on inspectors
- restoring the status of Chatham Island Council as a regional council under the MTA.

The RSTA Bill primarily amends the LTA, the Land Transport Management Act 2003, Railways Act 2005, the MTA, and the MSA.

The RSTA Bill also amends the Road User Charges Act 2012, the Government Rounding Powers Act 1989, the Port Companies Act 1988, the Ship Registration Act 1992, the Shipping Act 1987, and the Submarine Cables and Pipelines Act 1996.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
--	-----------

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
--	-----------

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The Ministry of Transport authored one Regulatory Impact Assessment (RIA) which informed policy decision that led to the RSTA Bill.</p> <p>The RIA is titled "Transport Instruments." It was completed on 6 August 2019.</p> <p>This RIA will be publicly released on the Ministry of Transport's website: https://www.transport.govt.nz/about/governance/ris-bccs/.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The RIA did not meet the threshold for Treasury RIA Team assessment.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
<p>Previously the RIA for transport instruments only proposed the inclusion of transport instruments in the LTA and MTA. After the RIA was completed, we identified that the power to enable transport instruments should have been more broadly enabled across core land and maritime transport legislation. These changes are not included in the RIA, but the substance of the proposal remains the same.</p> <p>We have also included a proposal to increase the number of board members on the boards of the New Zealand Transport Agency (NZTA), Maritime New Zealand (MNZ), and the Civil Aviation Authority. This addition has received an exemption from RIA requirements.</p>	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
---	-----------

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The size of the potential costs and benefits for the transport instruments proposal is available in the relevant RIA mentioned above.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
These proposals do not require compliance from any regulated parties.	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

No specific issues were identified in the policy process that may have implications for New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

No specific issues were identified in the policy process that may have implications for the rights and interests of Māori protected by the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The Ministry of Justice is undertaking an assessment of whether the RSTA Bill is consistent with the New Zealand Bill of Rights Act 1990 and will provide advice to the Attorney-General.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

However, the RSTA Bill does raise the maximum fine on conviction for individuals and body corporates allowed within the empowering provision for regulations in the MTA and MSA. This is to ensure consistency with the LTA and Civil Aviation Act 1990. This change does not amend any actual penalties for offences.

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Ministry of Justice was consulted on the proposals for transport instruments and minor matters. The Ministry of Justice is comfortable with the proposals.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>For transport instruments and minor matters, the Ministry of Transport consulted with various interested departments including the Treasury, Department of Internal Affairs, Ministry of Justice, WorkSafe New Zealand, Te Puni Kōkiri, NZTA, MNZ and the New Zealand Police (Police). We received no major feedback or concerns regarding these proposals.</p> <p>The following government departments were consulted on the draft of the RSTA Bill: Department of Internal Affairs, the Treasury, Ministry of Justice, WorkSafe New Zealand, Te Puni Kōkiri, Department of Prime Minister and Cabinet, State Services Commission and Ministry for Business, Innovation and Employment. We received no major feedback or concerns regarding these proposals.</p> <p>Ministerial cross-party consultation on the draft of the RSTA Bill has also taken place with no feedback received.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>For transport instruments, exemptions and the other minor matters, MNZ, NZTA and Police have been actively engaged during the development of these proposals of the RSTA Bill.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
---	----

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
---	----

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
--	----

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
--	----

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
---	----

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>One of the minor matters seeks to clarify and modernise the powers of exemptions and revocation of exemptions in land and maritime.</p> <p>The LTA (sections 166 and 166A) and MTA (sections 47 and 395) currently allow the NZTA Board and Director of MNZ to exempt a person or things from specified requirements in rules. The current provisions do not give regulators clear powers to revoke general exemptions or provide processes around revocation. A clear power to revoke would be expected if circumstances and/or conditions have been breached or when the exemption is no longer needed.</p> <p>We intend to use the HSWA as a guide in clarifying these exemption and revocation powers. The HSWA provisions (section 220 and 221) align with the Legislation Design and Advisory Committee guidance on best practice for exemption provisions.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Transport instruments will enable the Minister of Transport to delegate specified decision-making powers to a specified individual. Transport instruments will provide a mechanism for a quick response to change within the system. This could include rules that require relatively frequent adjustment, and minor or technical matters that need updating like terms or listing standards.</p> <p>The creation and use of transport instruments would reduce some of the burden on the Minister of Transport and the Ministry of Transport, as the specified matters would be tended to by the agency. As agencies already draft and consult on rule changes, the resources required by the agencies are likely to be similar to those currently required.</p> <p>We have used clauses 349 and 350 of the Civil Aviation Bill and section 227 of the HSWA as a guide for enabling transport instruments.</p> <p>This delegated decision-making is only used where specified by the Minister of Transport in a rule or regulation. Thus, a transport instrument is to have legal effect only to the extent that any of the regulations or rules refer to it. A transport instrument is to be a disallowable instrument, but not a legislative instrument.</p> <p>A specified person is to be enabled to make, amend or revoke a transport instrument. A specified person could include the NZTA Board or the Director of MNZ, for example.</p> <p>Before making a transport instrument the specified person must consult all persons and organisations that the specified person thinks appropriate.</p> <p>The transport instrument and any amendments need to be notified in the <i>Gazette</i> and ensure a copy is available on an internet site maintained by the relevant regulator.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
--	-----------